

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 1717 – HB 1722

February 21, 2018

SUMMARY OF ORIGINAL BILL: Enhances by one classification the offense of organized retail crime when the person exercised organizational, supervisory, financial, or management authority over the activity of one or more persons in furtherance of the offense.

Establishes various reporting requirements for merchants who sell stored value cards. Merchants must keep a record of each sale or purchase of a stored value card, and maintain a copy of the record for three years. The record must include the time, date, and place of the transaction; a complete and accurate description of the stored value card sold or purchased, including the name of the original issuer, if available, the amount of the stored value card, and the serial number and pin number of the stored value card; a description of the person purchasing or selling the stored value card; a copy of the purchaser or seller's government issued identification; and a signed statement by the seller that the seller is the rightful owner or is authorized to sell consign, or trade the stored value card.

These records must be delivered to the appropriate local law enforcement agency within 24 hours from the date of the transaction. Local law enforcement agencies must annually provide a record of all stored value card transactions that occurred in their jurisdiction to the chief executive officer on the county. The county must annually provide a record of all stored value card transactions occurring within the county to the Comptroller of the Treasury, which is authorized to use the records for auditing purposes.

Failure to maintain proper records by a merchant is a class A misdemeanor, and could result in the merchant losing its business license. Fine revenue generated from the new offense shall be earmarked for law enforcement purposes.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$91,500 Incarceration*

Increase Local Revenue – Up to \$25,000

Increase Local Expenditures – \$3,828,000**

SUMMARY OF AMENDMENT (013410): Deletes and rewrites all language after the enacting clause such that the only substantive changes are (1) to require law enforcement agencies to notify merchants of the reporting requirement, (2) to authorize the law enforcement agency to receive the required reporting information in an electronic or other report format

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approved by that law enforcement agency, (3) to require law enforcement agencies to store the reported data on a law enforcement owned, operated, and housed server, and (4) to authorize the Comptroller of the Treasury to request and receive from a law enforcement agency any data or information received by the agency under the proposed legislation.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures – \$91,500 Incarceration*

Increase Local Revenue – Up to \$25,000

Other Fiscal Impact – Potential mandatory increases in local expenditures, but the amount cannot reasonably be estimated.**

Assumptions for the bill as amended:

- Chapter 472 of the Public Acts of 2017 enacted the Organized Retail Crime Prevention Act. The Act created two new theft offenses.
- The proposed legislation enhances a violation of these offenses one classification if the defendant exercised organizational, supervisory, financial, or management authority over the activity of one or more persons in furtherance of the offense.
- It is assumed that the Act will result in the enhancement of one class E felony to a class D felony admission each year, one class D felony to a class C felony admission each year, and one class C felony to a class B felony admission every two years.
- These offenses would be prosecuted under the criminal responsibility statute, Tenn. Code Ann. § 39-11-402, at the same level as theft, but will be prosecuted one classification higher under the proposed legislation.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this proposed legislation.
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2018 is \$71.08.
- The average time served for a class D felony is 2.15 years. The average time served for class E felony is 1.31. The Act will result in one offender serving an additional 0.84 year.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving 0.84 years (306.81 days) at a cost of \$21,808 (\$71.08 x 306.81 days).
- The average time served for a class C felony is 3.28 years. The average time served for a class D felony is 2.15 years. The Act will result in one offender serving an additional 1.13 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based

on one offender serving 1.13 years (412.73 days) at a cost of \$29,337 ($\71.08×412.17 days).

- The average time served for a class B felony is 6.39 years. The average time served for a class C felony is 3.28 years. The Act will result in one offender every two years serving an additional 3.11 years.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every two years serving 3.11 years (1,135.93 days) for an annualized cost of \$40,371 [$(\$71.08 \times 1,135.93 \text{ days}) / 2$].
- The recurring increase in state incarceration costs is estimated to be \$91,516 ($\$21,808 + \$29,337 + \$40,371$).
- The proposed legislation creates a new class A misdemeanor for merchants knowingly failing to follow the reporting requirements. The violation could result in the merchant having its business license suspended or revoked at the discretion of the city or county clerk.
- Any fine revenue generated from the violation shall be earmarked by the city or county for law enforcement purposes. Because a violation could lead to a merchant losing its business license, the proposed legislation will not result in many violations.
- A class A misdemeanor can be punished with a fine up to \$2,500. It is assumed that the average class A misdemeanor fine is \$500.
- It is reasonable to assume that no more than 50 annual violations will result from the proposed legislation, and that the fine collected will be no more than \$500 per violation.
- The proposed legislation will result in a recurring increase in local revenue of up to \$25,000.
- The proposed legislation will substantially increase the number of records received by local law enforcement agencies, as it requires transactions to be reported to the appropriate law enforcement agency within 24 hours.
- The appropriate local law enforcement agency must collect the records and annually report transactions to the chief executive officer of the county in which it serves. The law enforcement agency can designate the preferred format for such records.
- Some local law enforcement agencies in Tennessee currently use online investigative systems that permit law enforcement agencies to search various transaction records (e.g., pawn shops, jewelry stores, eBay, etc.) in an attempt to recover stolen property.
- Some online systems are available through an annual subscription and others are free.
- Local law enforcement agencies could require additional resources—through personnel or through use of an online tool—to handle the increased records.
- To the extent that the volume received by a local law enforcement agency requires additional resources through personnel or through use of an online system, the proposed legislation could increase mandatory local expenditures, but the amount of such expenditures cannot reasonably be estimated.
- The proposed legislation requires law enforcement agencies to store the reports submitted to the agencies on a law enforcement owned, operated, and housed server. Currently, a regional, law-enforcement-owned server exists to collect law enforcement information from across the southeast. It is assumed that local law enforcement agencies will utilize this server to store the reporting records.

- The Comptroller of the Treasury can receive the 95 annual reports from the counties within its existing resources.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

***Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

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